

## Juvenile Law Case Summaries

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### ***No error in commitment to TYC as modification despite testimony as to desirability of other placement alternatives [In re B.N.] (01-4-03).***

On August 30, 2001, the Austin Court of Appeals held there was no abuse of discretion in commitment to TYC as a modified disposition despite testimony from the treatment providers that an alternative placement would be preferable.

¶ 01-4-03. In the Matter of B.N., UNPUBLISHED, No. 03-00-00546-CV, 2001 WL 987727, 2001 Tex.App.Lexis \_\_\_\_ (Tex.App.—Austin 8/30/01) [*Texas Juvenile Law* (5th Edition 2000)].

Facts: B.N., a juvenile, contends that the district court abused its discretion by committing him to the Texas Youth Commission ("TYC").

In October 1998, the court found B.N. had engaged in delinquent conduct—two counts of aggravated sexual assault ( [i] penetrating the anus of a child younger than fourteen years old with his penis and [ii] causing the sexual organ of a child younger than fourteen years old to contact B.N.'s mouth) and indecency with a child by contact (with intent to gratify his sexual desire, knowingly and intentionally touching the genitals of a child younger than fourteen years old). See Tex. Fam.Code Ann. § 51.03(a)(1) (West Supp.2001) (delinquent conduct); Tex. Penal Code Ann. §§ 21.11(a)(1) (indecency with child), 22.021(a)(1)(B)(i), (iii) (aggravated sexual assault) (West Supp.2001). B.N., born July 20, 1983, was fourteen at the time of the offenses. The court placed him on probation in the custody of the Department of Protective and Regulatory Services until July 20, 2001, B.N.'s eighteenth birthday.

In December 1998, the court modified the terms of his probation because he violated the original order by being truant. The court continued him in the custody of DPRS, but specified that the placement would commence at Pegasus, a residential treatment facility specializing in therapy for sex offenders. The court ordered that he obey all staff at DPRS and Pegasus.

In June 2000, the court found that he violated his probation by failing to obey Pegasus staff as evidenced by his discharge from Pegasus without successfully completing its program. In the order from which B.N. appeals, the court committed him to TYC.

Held: Affirmed.

Opinion Text: B.N. contends this disposition is an abuse of discretion because it rejects the overwhelming evidence that funds were available to place B.N. in Woodside Trails residential treatment facility in accordance with the recommendation of his probation officer and his managing conservator, Child Protective Services ("CPS"). We review a challenge to the modification of a disposition for an abuse of discretion. See *In re M.A.L.*, 995 S.W.2d 322, 324 (Tex.App.—Waco 1999, no pet.); *In re Cockrell*, 493 S.W.2d 620, 626 (Tex.Civ.App.—Amarillo 1973, writ ref'd n.r.e.). "[A] disposition based on a finding that the child engaged in delinquent conduct may be modified so as to commit the child to the Texas Youth Commission if the court after a hearing to modify disposition finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court." Tex. Fam.Code Ann. § 54.05(f) (West Supp.2001).

In the previous disposition order, the court required B.N. to obey Pegasus staff as a condition of his

probation. Requiring B.N. to obey the staff at his residential treatment program is a reasonable and lawful order. Undisputed evidence showed that (1) Pegasus school rules prohibit residents from having sex with each other, (2) B.N. had sex with another resident, and (3) B.N. was discharged at least in part for having sex with another resident. Although the sexual conduct apparently precipitated his termination, Pegasus staff also testified that he was making unduly slow progress in therapy. Because the record provides sufficient evidence that B.N. violated a reasonable and lawful order of the court, the trial court did not abuse its discretion in modifying B.N.'s disposition as it did.

Even if we review the court's order under the standards for an original disposition, as B.N. invites us to do, B.N. has not shown that the court abused its discretion in making the placement. Under Family Code section 54.04, a court either placing a child on probation outside the child's home or committing the child to TYC must include in its determination the following:

- (1) it is in the child's best interests to be placed outside the child's home;
- (2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to the child's home; and
- (3) the child, in the child's home, cannot be provided the quality of care and level of support and supervision that the child needs to meet the conditions of probation.

Tex. Fam.Code Ann. § 54.04(i). Though not required to make these findings in a modification order, the court nevertheless made them in the order appealed. B.N. does not assert that any of these determinations are erroneous regarding B.N.'s familial home. Nor do we find any abuse of discretion in such findings regarding his "home" in the custody of CPS.

B.N. points to testimony that another treatment facility was available for him; he complains that the trial court erred by not placing him in this facility rather than TYC. His probation officer, his CPS caseworker, and his court-appointed special advocate (CASA) all testified that they believed B.N. would benefit from placement at Woodside Trails. Their testimony was supported by a report from psychological examinations. They testified that the Pegasus program did not adequately address all of B.N.'s psychological and educational needs. They also recommended placement at Woodside Trails because of the great uncertainty whether B.N. could receive treatment in TYC due to long waiting lists.

Their testimony was rebutted by testimony from Pegasus staff members that B.N. made little progress at Pegasus, was likely to reoffend, and was unlikely to benefit from placement in another residential program. The program at Pegasus, comprising four phases, usually takes a total of between twelve and eighteen months to complete; after sixteen months of treatment, B.N. was only on phase two and had violated the rule against having sex with fellow residents. A Pegasus administrator testified that the TYC program might be helpful, if B.N. could get into it; he primarily recommended placement in TYC to keep the community safe from B.N. There was some indication that B.N. had done well in the more structured environment of the juvenile detention center.

Evidence supports the court's additional findings that the attempt to place B.N. other than in TYC had failed and that B.N. would be better served and society would be better protected with B.N. in TYC. Finding no error, we affirm the court's order modifying disposition.